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| 10/804,202      | 03/19/2004  | Kevin M. Daniel      | 3691-618            | 6513             |

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EXAMINER

STRIMBU, GREGORY J

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3634

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/804,202

Applicant(s)

DANIEL ET AL.

Examiner

Gregory J. Strimbu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/19/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### ***Drawings***

The drawings are objected to because the drawings include superfluous lettering such as "cover" in figures 4-6, "Appliqué" in figure 14 and "Traditional Slider" in figure 15. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "34" in figure 6 and "34a" in figure 4 have both been used to designate a rod/cable. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because "is provided" on line 1 can be easily implied and therefore should be deleted. Additionally, the abstract is objected to because the abstract fails to describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details. Note that the abstract fails to mention the seal carrier, the bulb seal and the latch assembly. Correction is required. See MPEP § 608.01(b).

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. It is suggested that the applicant amend the title to include the seal carrier and seal and/or the appliqué. See claims 1 and 15.

### ***Claim Rejections - 35 USC § 112***

Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "sliding window" on lines 5-6 of claim 1 render the claims indefinite because it is unclear if the applicant is referring to the window panel set forth above or is attempting to set forth another window in addition to the window panel set forth above. Recitations such as "gap(s)" on line 11 of claim 1 render the claims indefinite because it is unclear what the applicant is attempting to set forth. Recitations such as "tracks" on line 8 of claim 2 render the claims indefinite because it is unclear if the applicant is referring to the tracks set forth above or is attempting to set forth tracks in addition to the ones set forth above. Recitations such as "and/or" on line 13 of claim 2 render the claims indefinite because it is unclear what is meant by the recitation "/". Is the applicant setting forth "and" and "or" or "and" or "or"? Recitations such as "an interior of the vehicle" on lines 3-4 of claim 4 render the claims indefinite because it is unclear if the applicant is setting forth the subcombination of a window assembly or the combination of a window assembly and a vehicle. The preamble of claim 1 implies the subcombination while the positive recitation of the vehicle on lines 3-4 of claim 4 implies the combination. Recitations such as "or" on line 2 of claim 14 render the claims indefinite because it is unclear which one of the non-equivalent alternatives the applicant is attempting to positively set forth.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA

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1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-6 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of copending Application No. 10/653,412 in view of Warner et al. Claims 1-4 of copending Application No. 10/653,412 disclose the invention recited in claims 1-6 of the instant application but for a seal carrier and an injection molded bulb seal.

However, Warner et al. discloses a flush-closing multi-panel window assembly for a vehicle, the flush-closing multi-panel window assembly comprising: first 1 and second 3 fixed window panels; a sliding window panel 5 that is provided between the first and second fixed window panels when the sliding window panel is in a closed position, the sliding window being flush with the first and second fixed window panels when in the closed position; a seal carrier 25 supported by the sliding window panel; and an injection molded bulb seal 21, 23 supported by at least the seal carrier, wherein the injection molded bulb seal extends around an entire periphery of the sliding window panel so as to cover gaps adjacent the edge of the sliding window panel, first and second appliques 81, 83, upper and lower frame members (not numbered, but shown in figure 1), the upper frame member including a track 17 and the lower frame member including a track (not shown, but see page 2 paragraph 25), a base portion of the bulb

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seal 21, 23 includes a second recess which is capable of receiving a part of an end of a flexible lip 21 of the bulb seal.

It would have been obvious to one of ordinary skill in the art to provide claims 1-4 of copending Application No. 10/653,412 with a seal carrier and bulb seal, as taught by Warner et al., to provide a better seal between the sliding window and the frame.

This is a provisional obviousness-type double patenting rejection.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7-11 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Warner et al. Warner et al. discloses a flush-closing multi-panel window assembly for a vehicle, the flush-closing multi-panel window assembly comprising: first 1 and second 3 fixed window panels; a sliding window panel 5 that is provided between the first and second fixed window panels when the sliding window panel is in a closed position, the sliding window being flush with the first and second fixed window panels when in the closed position; a seal carrier 25 supported by the sliding window panel; and an injection molded bulb seal 21, 23 supported by at least the seal carrier, wherein the injection molded bulb seal extends around an entire periphery of the sliding window panel so as to cover gaps adjacent the edge of the sliding window panel, first and

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second appliqués 81, 83, upper and lower frame members (not numbered, but shown in figure 1), the upper frame member including a track 17 and the lower frame member including a track (not shown, but see page 2 paragraph 25), a base portion of the bulb seal 21, 23 includes a second recess which is capable of receiving a part of an end of a flexible lip 21 of the bulb seal.

***Claim Rejections - 35 USC § 103***

Claims 2, 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warner et al. as applied to claims 1, 7-11 and 13 above, and further in view of Schneider. Warner et al. is silent concerning a latch assembly.

However, Schneider discloses a latch assembly including first and second spring biased pins 62 adapted to slide in tracks (not numbered, but shown in figure 2) of left and right frame members (not numbered, but shown in figures 1 and 2), respectively, during opening and closing of a sliding window panel 31; and wherein the latch assembly further includes first and second selectively actuatable members adapted to be moved toward one another so that when the first and second selectively actuatable members are moved toward one another the first and second pins are caused to exit first and second apertures and/or cut-outs 74 defined in the frame members, respectively, and the sliding window panel can thereafter be slid in order to open the sliding window panel.



It would have been obvious to one of ordinary skill in the art to provide Warner et al. with a latching assembly, as taught by Schneider, to increase the security of the window assembly.

Claims 1, 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buening in view of Schneider. Buening discloses a flush-closing multi-panel window assembly for a vehicle, the flush-closing multi-panel window assembly comprising: first 16 and second 24 fixed window panels; a sliding window panel 32 that is provided between the first and second fixed window panels when the sliding window panel is in a closed position, the sliding window being flush with the first and second fixed window panels when in the closed position; a seal carrier 41 supported by the sliding window panel; and an injection molded bulb seal 43 supported by at least the seal carrier, wherein the injection molded bulb seal extends around an entire periphery of the sliding window panel so as to cover gaps adjacent the edge of the sliding window panel. Buening is silent concerning a latch assembly. It should be noted that Buening discloses the applicant's claimed "bulb" seal since both the applicant and Buening disclose a lip that is attached at only one end thereof.

However, Schneider discloses a latch assembly including first and second spring biased pins 62 adapted to slide in tracks (not numbered, but shown in figure 2) of left and right frame members (not numbered, but shown in figures 1 and 2), respectively, during opening and closing of a sliding window panel 31; and wherein the latch assembly further includes first and second selectively actuatable members adapted to

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be moved toward one another so that when the first and second selectively actuatable members are moved toward one another the first and second pins are caused to exit first and second apertures and/or cut-outs 74 defined in the frame members, respectively, and the sliding window panel can thereafter be slid in order to open the sliding window panel.

It would have been obvious to one of ordinary skill in the art to provide Buening with a latching assembly, as taught by Schneider, to increase the security of the window assembly.

Claims 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warner et al. as applied to claims 1, 7-11 and 13 above, and further in view of Nozaki et al. Nozaki et al. discloses a bulb seal 10 comprising a base portion 20 having a recess (not numbered, but shown in figure 2A) which receives an adhesive tape 36.

It would have been obvious to one of ordinary skill in the art to provide Warner et al. with an attachment means, as taught by Nozaki et al., to increase the ease with which the seal is attached to the window panel.

Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wenner et al. in view of Kelly. Wenner et al. disclose a flush-closing multi-panel window assembly for a vehicle, the flush-closing multi-panel window assembly comprising: first 26 and second 32 fixed window panels, a sliding window panel 60 that is provided between the first and second fixed window panels when the sliding window panel is in a

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closed position, the sliding window being flush with the first and second fixed window panels when in the closed position; first 22 and second 24 appliqués located above and below the sliding window panel when the sliding window panel is in the closed position; and wherein at least one of the first and second appliqués includes a main body portion 30, 40 comprising a first material and an abutting portion 18 comprising a second material, wherein the abutting portion of the appliqué is located at an edge of the appliqué which abuts a corresponding edge of at least one of the fixed window panels 32 as shown in figure 5. Wenner et al. is silent concerning the first material being softer than the second material.

However, Kelly discloses an appliqué 22 comprising a main body portion 32 comprising a first polymer based material and an abutting portion 34 comprising a second polymer based material that is softer than the first polymer based material.

It would have been obvious to one of ordinary skill in the art to provide the appliqué of Wenner et al. with various hardness, as taught by Kelly, to increase the sealing ability of the appliqué without sacrificing the strength of the appliqué.

### ***Allowable Subject Matter***

Claim 5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record, absent applicant's own disclosure, fails to teach the

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entire combination of elements set forth in the claimed invention. Specifically, the prior art of record fails to teach the first and second pins are at least partially located in respective apertures defined in the seal carrier. See claim 5, lines 2-3.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Page '113 and '256, Randazzo and Lyons et al. are cited for disclosing an appliqué. Takeuchi et al. is cited for disclosing a seal having a recess for receiving a portion thereof. Zitomer, Mendelsohn, Segre, Hicks, Draheim et al., Hannes, Swanson et al., Erb and Dean are cited for disclosing a locking mechanism. DiGinosa and Gipson '771 are cited for disclosing a closure carried seal.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 703-305-3979. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Gregory J. Strimbu", with a long horizontal flourish extending to the right.

Gregory J. Strimbu  
Primary Examiner  
Art Unit 3634  
March 14, 2005